IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.MC.No. 1036 of 2007()

CC.7/2003 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOZHIKODE

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PETITIONERS/ACCUSED/COMPLAINANT:

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1. K.A.MUHAMMED, S/O.BAPPU HAJI,
AGED 57 YEARS, RESIDING AT KOMBATHAIL HOUSE,
CHOOLPURAM, KOTTAPPADI, TRICHUR,
CHOOLPURAM AMSOM AND DESOM OF TRICHUR TALUK.

2. M/S.TRIVENI INDUSTRIAL CORPORATION,
19/9997-D, NASNA BUILDINGS, TALI EAST,
CALICUT-2, REPRESENTED BY ITS MANAGING PARTNER,
A.C.ISSAC, S/O.LATE A.M.SAKARIA, AGED 54 YEARS,
KASABA AMSOM AND DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.K.M.FIROZ

RESPONDENT/STATE:

BY PUBLIC PROSECUTOR SRI.C.KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1036 of 2007

Dated this the 29th day of March 2007

O R D E R

The petitioner/accused has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. Challenge was ultimately taken to this court. This court has confirmed the verdict of guilty and conviction. The petitioner/accused now faces a sentence of imprisonment till rising of court. There is also a direction to pay an amount of Rs.3,75,000/- to the complainant and in default to undergo S.I for a period of six months.

2. According to the petitioners, direction for payment of compensation has already been complied with. The direction specifically was not to deposit the amount but only to pay the amount. The petitioners apprehend that notwithstanding such payment, the learned Magistrate may choose to execute the default sentence in as much as the compensation amount has not been deposited before court. The petitioners have hence come to this court with the prayer to invoke the powers under Section 482 Cr.P.C and to set aside the sentence imposed invoking the dictum in Sabu George vs. Home Secretary [2007(1) KHC 903].

I am unable to agree that the extraordinary inherent powers do deserve to be invoked in the facts and circumstances of this case. The petitioner/accused faces a sentence of imprisonment till rising of court only. If the petitioner/accused has paid the entire amount to the complainant and the complainant has accepted the same in full satisfaction, there can be no question of the default sentence being executed against the petitioner/accused. The last trace of doubt, if any, on this aspect has been laid to rest in Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16]. The apprehension of the petitioner, in these circumstances, appears to be unjustified.

3. In the result, this Criminal Miscellaneous Case is dismissed but I may hasten to observe that if the complainant and the accused satisfy the learned Magistrate that the amount due by way of compensation has been received in full satisfaction, there can be no question of default sentence being executed against the petitioner.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006